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TRANSCRIPT OF PROCEEDINGS

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

IN THE MATTER OF:

MM DOCKET NO. 92-201

ORDER TO SHOW CAUSE DIRECTED AGAINST

MARIO J. GABELLI AND GABELLI FUNDS, INC.

DATE OF HEARING: October 27, 1992

VOLUME: 2

PLACE OF HEARING: 2000 L Street, N.W.

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Court Reporting Depositions
D.C. Area 261-1902
Balt. & Annap. 974-0947

Before the
FEDERAL COMMUNICATIONS COMMISSION
 Washington, D.C. 20554

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)
 In the matter of:)
)
 Order to Show Cause Directed Against)
)
 MARIO J. GABELLI) Docket No. 92-201
)
 and)
)
 GABELLI FUNDS, INC.)
 -----)

The above-entitled matter came on for hearing pursuant to Notice before Judge Joseph Stirmer, Administrative Law Judge, at 2000 L Street, N.W., Washington, D.C., in Courtroom No. 4, on Tuesday, October 27, 1992, at 10:00 a.m.

APPEARANCES:

On behalf of Mario J. Gabelli/Gabelli Funds, Inc.:

Alan Y. Naftalin
 Koteen & Naftalin
 1150 Connecticut Avenue
 Washington, D.C. 20036

On behalf of FCC Mass Media Bureau:

Larry A. Miller
 Hearing Branch
 2025 M Street, N.W.
 Room 7212
 Washington, D.C.

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25	Hearing Began: 10:00 a.m.	Hearing Ended: 10:17 a.m.

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P R O C E E D I N G S

1 JUDGE STIRMER: Good morning. This is the date
2 scheduled for commencement for hearing in Docket No. 92-201, a
3 Show Cause proceeding directed against Mario Gabelli and
4 Gabelli Funds, Inc. A prehearing conference was held on
5 September 9, 1992, at which time matters relating to a pending
6 interlocutory request were discussed, discovery was
7 considered, clarification of the designation or order was
8 undertaken, and we also discussed and adopted a hearing
9 schedule to govern the proceeding.
10

11 I'd like, at this time, to obtain the appearances
12 for Mario J. Gabelli and Gabelli Funds, Inc.

13 MR. NAFTALIN: Alan Naftalin of Koteen & Naftalin.

14 JUDGE STIRMER: And for Mass Media Bureau.

15 MR. MILLER: Larry A. Miller.

16 JUDGE STIRMER: Let me dispose of one preliminary
17 matter. At our last prehearing conference we had discussed
18 the personal interview that was called for in the designation
19 order. Now, was that accomplished?

20 MR. MILLER: Yes, it was, Your Honor.

21 JUDGE STIRMER: Would you, would you want to state
22 for the record when that was, was held?

23 MR. MILLER: Let me see if I have the date. Okay.
24 The personal interview involving representatives of Mario
25 Gabelli was -- were -- was held on September 21st, 1992, at

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1 the Commission offices here in Washington, D.C., and there was
2 -- we believe that, that met the requirements of the
3 Communications Act for hold -- allowing a personal interview
4 for the -- Mr. Gabelli.

5 JUDGE STIRMER: All right. I might state for the
6 record that yesterday afternoon I met with the parties to this
7 proceeding at which time I was advised that an agreement is
8 close at hand to resolve this proceeding. And I believe the
9 parties need some additional time to finalize such agreement
10 and I suggested that we meet today because there are certain
11 matters that I wanted to discuss on the record so that I'm
12 clear in my own mind precisely where we're going in this case.

13 First -- let me state -- or let me say or ask
14 whether this agreement that you all are contemplating, will
15 that have a recitation of the media interests that are
16 involved in this proceeding?

17 MR. MILLER: Yes, Your Honor. There will be
18 attachments to the agreement, which list all of the inter --
19 media interests of Gabelli -- when I say Gabelli I'm referring
20 to Mr. -- to Mario J. Gabelli and Gabelli Funds, Inc., all of
21 the attributable interest that, that Gabelli holds, and it
22 will also list interest that exceed the Commission's five
23 percent benchmark for attributable interest that -- but that
24 are nonattributable because of a single majority stockholder
25 or, or other --

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1 JUDGE STIRMER: All right. That's, that's what I
2 wanted to ask. I think your agreement should recite all the
3 media interests. The ones that are attributable, the ones
4 that you agree are not attributable and the reason why you
5 agree they're not attributable. And they should certainly
6 include all of those interests that are recited in the
7 designation order so we account for each and every one of them
8 in some fashion.

9 MR. NAFTALIN: Your Honor, that sounds fine to me
10 with one reservation. We aren't going to list interest below
11 five percent.

12 JUDGE STIRMER: That's correct. All right.

13 MR. NAFTALIN: Okay.

14 JUDGE STIRMER: That's fine. Below five percent,
15 they're obviously not attributable.

16 MR. MILLER: Unless they happen to be a limited
17 partnership or --

18 MR. NAFTALIN: Yes.

19 MR. MILLER: -- gotten into that -- but, but yes.
20 Anything that's potentially attributable we would -- we can
21 list.

22 JUDGE STIRMER: Okay. Now, it's my understanding
23 that the agreement, and I don't want to get into any specific
24 details of the agreement, will resolve this proceeding
25 entirely.

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1 MR. MILLER: Yes, Your Honor, it's our, it's our
2 belief that the, the agreement will achieve the result that
3 the Commission was looking -- was -- that this Order to Show
4 Cause is designed to achieve in, in that Gabelli will agree to
5 come into compliance with the Commission's rules and, and
6 remain in compliance with the Commission's rules. And that is
7 primarily the reason that the Bureau has, has entered into
8 this because we feel that it is in the public interest and it
9 will achieve the goals of the, of the Order.

10 JUDGE STIRMER: All right. Now, will this
11 agreement track the consent order procedures that are set
12 forth in the Commission's rules?

13 MR. MILLER: Is --

14 JUDGE STIRMER: I mean so that it -- there are
15 certain recitations which --

16 MR. MILLER: Yes, it does.

17 JUDGE STIRMER: -- should be made.

18 MR. MILLER: Yes.

19 JUDGE STIRMER: All right. Now, will there be some
20 provisions for monitoring compliance --

21 MR. MILLER: Yes, there are --

22 JUDGE STIRMER: -- in the future?

23 MR. MILLER: Yes, there are.

24 JUDGE STIRMER: Will there be provisions for
25 enforcement in the event that there is a violation of the --

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1 MR. MILLER: There -- yes, there will also be
2 provisions for enforcement, both of the, of the rules and of
3 the order.

4 JUDGE STIRMER: All right. Because that's my main
5 concern. I don't want to be put in a position where I'm
6 presented with an agreement that I look at and find that it
7 may well be that in another year or two we're back again with
8 the same problem that we have now. I, I want to avoid that.
9 And I would hope that the agreement takes care of that so we
10 don't need another proceeding in the unlikely event that some
11 additional violations are committed.

12 MR. NAFTALIN: Could I just add one thing, Your
13 Honor?

14 JUDGE STIRMER: Certainly.

15 MR. NAFTALIN: This is not a consent order. It
16 does accomplish the purposes that are -- that you outlined and
17 it does track certain provisions in the consent order rules,
18 but it is not, itself, a consent order. However, I -- we both
19 agree that, assuming it's entered into, that it will
20 accomplish the purpose that the Commission wants -- that the
21 Bureau wants.

22 JUDGE STIRMER: Yeah. Well, as long as it
23 accomplishes the purposes intended by the institution of this
24 proceeding, I don't care what you call it -- what the force
25 and effect of it is that's important.

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1 MR. NAFTALIN: Yeah.

2 JUDGE STIRMER: Now, there'll be an order issued at
3 the end of this thing adopting all of your agreements.

4 MR. NAFTALIN: Well, we certainly hope so, Your
5 Honor.

6 JUDGE STIRMER: So you, you may not call it a
7 consent order, but in practice that's what it might well be.

8 MR. NAFTALIN: That's a touchy point, Your Honor.

9 JUDGE STIRMER: I understand. All right. Now, how
10 much time do you think you'll need to incorporate all of these
11 matters? I know that you have done a great deal of work thus
12 far and you're pretty close to having a final document that
13 can be signed --

14 MR. MILLER: We're very --

15 JUDGE STIRMER: -- submit it.

16 MR. MILLER: We're very close to having a final
17 document to be signed and I think within a week we can, we can
18 wrap this up and, and have a submission for you to look at.

19 JUDGE STIRMER: All right. Again, I must, I must
20 tell you that I don't know what my position is going to be
21 until I see a final document before me.

22 MR. MILLER: We understand.

23 JUDGE STIRMER: All right. And then I may have
24 some suggestions perhaps or I may find that it meets all the
25 objectives that you all intended and that the Commission

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1 intended and then I could approve it.

2 MR. NAFTALIN: Your Honor, what I would -- we're
3 asking that you put off the hearing, obviously, from today.
4 Perhaps instead of rescheduling the hearing for a week from
5 today, we could just set a deadline of a week from today to,
6 to have this submission to you. And if -- rather, you know,
7 that way we know we're working towards that date rather than
8 setting the hearing date for a week from today.

9 JUDGE STIRMER: All right. So you want another
10 date by which the agreement should be submitted to me and then
11 once that's submitted -- I wouldn't put off setting a hearing
12 date until I have an opportunity to consider and act on the
13 agreement.

14 MR. MILLER: Is that, is that --

15 MR. NAFTALIN: I think that's a very good idea,
16 Your Honor.

17 JUDGE STIRMER: All right. You think you can have
18 that agreement on file by next week? Tuesday or Wednesday?

19 MR. NAFTALIN: Yes.

20 MR. MILLER: I believe so.

21 MR. NAFTALIN: Your Honor, we'd like to submit it
22 to you, however, not file it. If, if it's not approved, then
23 everything is off. And we would have some considerations
24 about whether it's public. Once it's approved we recognize,
25 if it is, we recognize that it's a public document.

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1 JUDGE STIRMER: All right. Let's -- that would be
2 -- you'd submit that to me next Tuesday. That would be when?
3 Does anyone have a calendar in front of them?

4 MR. NAFTALIN: I believe it's -- isn't that
5 Election Day? November 3rd?

6 MR. MILLER: Next Tuesday would be November 3rd.

7 JUDGE STIRMER: All right. All right. You will
8 submit the, the completed draft, signed, executed document to
9 me for my consideration on November 3rd and then you would
10 want me to tell you whether it was acceptable or not?

11 MR. NAFTALIN: That's our --

12 JUDGE STIRMER: And if it is acceptable, you all
13 would file it and ask that it be approved? Is that the
14 procedure that you all are going to adopt?

15 MR. MILLER: I think that's fine.

16 MR. NAFTALIN: Yeah. That would be fine, Your
17 Honor.

18 MR. MILLER: That would be acceptable.

19 JUDGE STIRMER: All right. All right. Then I will
20 continue the hearing without date pending a submission next
21 Tuesday of your settlement agreement in this proceeding and
22 if, if I find the agreement to be satisfactory, I will
23 dispense with setting a hearing date and instruct you to file
24 the document as a formal pleading. If I find it to be
25 unacceptable, I will either schedule a hearing or convene a

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1 further conference, at which time I will advise you all of my
2 concerns and what I would be believe to be shortcomings in the
3 settlement agreement.

4 All right. If there's nothing further, then, we
5 will stand in recess. I will continue the hearing pending the
6 submission of settlement document to me for my consideration
7 next Tuesday.

8 MR. MILLER: Okay.

9 JUDGE STIRMER: Is that agreeable, Mr. Naftalin?

10 MR. NAFTALIN: Yes, Your Honor

11 JUDGE STIRMER: Mr. Miller?

12 MR. MILLER: Yes, it is, Your Honor.

13 JUDGE STIRMER: All right. Thank you very much.

14 We will stand in recess.

15 (Whereupon, at 10:17 a.m., the hearing was
16 adjourned.)

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Order to Show Cause Directed Against Mario J. Gabelli and
Gabelli Funds, Inc.

Name of Hearing

92-201

MM Docket No.

Washington, D.C.

Place of Hearing

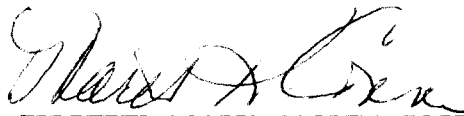
October 27, 1992

Date of Hearing

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October 29, 1992

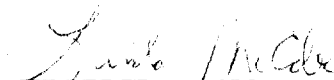
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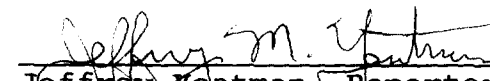
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